(2)

No. 03-1058

FEB 23 2004

In The

Supreme Court of the United States

RUBY CARTER, Individually, and on behalf of the Wrongful Death Heirs, Beneficiaries, and Estate of STACIE CARTER, Deceased,

Petitioners,

vs.

MISSISSIPPI DEPARTMENT OF CORRECTIONS AND FRED CHILDS, in His Official Capacity as Superintendent of the Rankin County, Mississippi Correctional Facility,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Mississippi

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Should the Petition for Writ of Certiorari be denied when the State Courts properly considered the facts as presented and appropriately applied the law, including defenses which were available to the state of Mississippi?

II. Should the Petition for Writ of Certiorari be denied when the State Courts considered the evidence of "policy" and "deliberate indifference" as required in summary judgment?

III. Does Mississippi sovereignty and the immunity under the Mississippi Tort Claims Act violate constitutional rights of petitioners, such that the Petition for Writ of Certiorari should be granted?

IV. Should the Petition for Writ of Certiorari be denied on the question of punitive damages in the absence of liability, without a constitutional right to such damages, and when the petitioners' Second Amended Complaint did not seek such recovery?

LIST OF PARTIES

The following is a list of all parties to the proceedings in the Court below, as required by this court's Rule 24(b) and Rule 29.1.

1. Ruby Carter, individually, and on behalf of the wrongful death beneficiaries of Mr. Carter. Petitioners

2. The Mississippi Department of Corrections and Fred Childs in his official capacity as Superintendent of the Rankin County, Mississippi Correctional Facility. Respondents

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STATEMENT REGARDING JURISDICTION

The issues presented to and resolved by the Mississippi Supreme Court do not create a conflict between the State Courts within the meaning of Sup. Ct. Rule 10(b) and (c). This petition simply seeks to have the Court reinterpret "facts" as reviewed by the State Courts.

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth, Eleventh and Fourteenth Amendments to the United States Constitution, as well as 42 U.S.C. §1983, are considered herein. Provisions from Mississippi Code Sections 11-46-1, et seq., also known as the Mississippi Tort Claims Act, also are discussed.

STATEMENT OF THE CASE

The Petitioners brought this action based upon a claim for the wrongful death of Stacie Carter (hereinafter "Mr. Carter"). Mr. Carter died on January 15, 1997 while en route to the University Medical Center in Jackson, Mississippi. At the time of his death, Mr. Carter was an inmate at the Central Mississippi Correctional Center in Rankin County, Mississippi.

In January 1995, Mr. Carter was sentenced by the Lincoln County Circuit Court to serve a five year sentence in the custody of the Mississippi Department of Corrections for burglary and robbery.

Mr. Carter suffered from a seizure-type medical condition. Mr. Carter's medical condition was kept under reasonable control through the self-regulated use of the

prescription drug Dilantin. Due to the classification of the prescription, Mr. Carter was allowed to maintain personal possession of his medication. He was solely responsible for the amount of dosage of the medicine that he received each day.

In the original complaint, the amended complaints, and in discovery responses, the petitioners sought money damages.

On January 28, 2002, the Petitioners sought and were granted permission to file a Second Amended Complaint. The Petitioners filed the Second Amended Complaint on January 30, 2002. The Second Amended Complaint added causes of action for violations of 42 U.S.C. §1983, citing the Eighth Amendment as well as Due Process and Equal Protection rights under the Fourteenth Amendment. The caption identified Fred Childs as being sued in his official capacity. The petitioner did not request punitive damages within the Second Amended Complaint.

On March 5, 2002, an Answer to the Second Amended Complaint was filed on behalf of the Respondents. Within the Answer to the Second Amended Complaint, the respondents renewed a motion for Summary Judgment or, In The Alternative, Motion to Dismiss. The Motions were briefed and a hearing was set.

On July 2, 2002, the trial court heard oral arguments on the Motion to Dismiss or In The Alternative for Summary Judgment. On October 3, 2002, the trial court issued its order and opinion granting the motion and dismissing the action. The trial court considered all the evidence offered by the Petitioners.

The Mississippi Supreme Court affirmed the trial court's decision.

REASONS FOR DENYING THE WRIT

I.

The state courts properly considered the facts as presented and appropriately applied the law, including defenses, which were available to the State of Mississippi.

The Petition for Writ of Certiorari, at its core, is an attempt to reinterpret the facts as considered by the state courts. Conflicts of law are not genuinely presented.

Petitioners suggest within the Petition for Writ of Certiorari, that the state courts did not consider certain evidence. This "evidence" was either untrue or was not genuine and material evidence given weight in summary judgment.

Taken from the Petition, pages 13 and 14, these so-called facts are as follows:

a. The RCCF was a "Death Camp" with deplorable conditions for inmates where seven (7) inmates had died, six (6) of whom were black, between October 5 1996, when the facility opened and January 15, 1997, when Stacie died.

The truth of the matter is that the petitioner offered no evidence that any of the other deaths were even remotely similar to the death of Mr. Carter. The state courts understood and considered that this suggestion was not material to the issues presented in this case.

"b. The RCCF had 600-650 inmates, of whom 60-65% were black."

While statistically questionable, it was seen for what it is, a blatant attempt to inject racial tones where none existed.

"c. The prison facility had a policy that required an inmate to suffer three seizures before the medical unit would be notified."

The lower courts understood that this was not a blanket policy and that all circumstances or factors would be considered. The state courts were able to consider the "genuineness" of this evidence according to state standards.

"d. Nurses were not available at the facility on a daily or hourly basis." and

"e. There was not ambulance or physician on duty."

These statements ignore the fact that Mr. Carter died after having been taken to one hospital and was being transferred to another. They also ignore the fact that no evidence whatsoever was offered that such staffing caused or would have changed the result. Further, the argument is hardly genuine in that it ignores the "on-call" medical personnel.

"f. Funds had been appropriated for an ambulance, but the funds had been misspent."

The state courts saw this "evidence" for what it was, and what it was not. It was not the type of evidence which was generally acceptable pursuant to MRCP 56; nor was it material to the legal issues presented.

"g. The correction officers at the facility had not been trained to render medical treatment not even C.P.R."

This statement was not supported by the training records of any person, nor does it address the training of the personnel who were involved with Mr. Carter. But most significantly, it again ignores the fact that Mr Carter died while being transported from one hospital to another. The medical care which may have been offered by correctional officers was simply not relevant.

"h. There was a staff shortage of corrections officers to monitor the inmates at the facility."

No evidence was offered regarding medical service personnel and staffing or that such staffing caused or changed the result. The state courts considered the suggestion and gave it appropriate weight.

"i. All of the inmates at the RCCF had serious medical needs."

This is simply not true, the state courts were able to recognize the absurdity of the statement.

"j. Corrections officials knew about Stacie's seizures and knowingly transferred him from Parchman which had a prison hospital to the RCCF which did not have a prison hospital.

This statement ignores the fact that Mr. Carter did not require regular hospitalization prior to his death. He was self-regulating his seizure disorder with Dilantin. The state courts considered these facts.

Rather than acknowledge that the state courts considered this evidence, the petitioners argue that some circuits consider the evidence while Mississippi does not. The

primary flaw in this argument of the petitioners is that there is simply no record that the state courts did not consider the conditions of confinement. A conflict between the courts does not exist under these circumstances.

II.

The state courts considered the "genuineness" of the evidence of "policy" and "deliberate indifference" as required in summary judgment.

Despite the petitioners' assertion that the facts suggest "deliberate indifference" or a policy of violating a constitutional right, they fail to offer facts which support this argument.

In considering the Eighth Amendment claim, the Petitioners have the burden of showing that the State acted or failed to act with "deliberate indifference" to the "basic human needs" of Mr. Carter. Petitioners failed to show that to be true.

The decedent, Mr. Carter, suffered his first seizure while still a student in high school, nearly five years prior to his death. Carter had sought and received medical treatment for his seizure condition. As part of his treatment and control of his unfortunate physical condition, Carter was prescribed the commonly known medication Dilantin. Carter was personally responsible for taking the proper dosage of the anti-epileptic drug to treat his condition. Ruby Carter, the mother of the decedent, has testified regarding the decedent and his prescription medication as follows:

Q. Okay. Prior to him going to the Lincoln County Jail, had he taken his Dilantin on a regular basis?

A. As far as I know.

Q. Okay. Now, was that something that – that you didn't have to look out after and for?

A. Right.

Q. He did it on his own.

A. And, you know, if he got out of medicine, I'd have it filled –

Q. Okay.

A. – you know. But as far as I know, he was taking it.

Q. But you didn't have to stand over him like you might have to a young child –

A. No.

Q. – and say, "Take your medicine"?

A. No.

Q. All right. As best you know, he was – he was of the mind to take medicine on a regular basis like he was supposed to.

A. Yes.

The State of Mississippi and Fred Childs had no advance knowledge that inmate Mr. Carter was experiencing difficulties or problems with his seizure condition. Even his own mother who visited him at the facility in Rankin County on the Sunday prior to his death on

Wednesday has testified that the decedent was acting normal.

As Ruby Carter also testified:

> Q. Do you have any reason to believe, then, as his mama that he wasn't taking the Dilantin like he was supposed to?
>
> A. No.
>
> Q. Did he – did you ask him about his taking Dilantin?
>
> A. No, I didn't ask him because he used – I hadn't gotten no reports of no seizures lately.
>
> Q. Okay. Had he – as best you know, as we sit here today, how long prior – you know, that visit on Sunday before he passed away on Wednesday, how long had it been on that Sunday since he'd had a seizure, if you know?
>
> A. That – that was in – that was in January, and I hadn't – I didn't know of another seizure since when he first got there. And I guess it was October or November when the – when the boy told me about it.
>
> Q. During his time at the Rankin County facility when you were visiting on these Sundays, every other Sunday or Sunday – whenever it was that you visited, did you ever believe that he wasn't capable of taking the medicine he was supposed to be taking?
>
> A. No.

The Fifth Circuit has declared that under the Eighth Amendment it is the duty of the state to provide convicted inmates with the following:

> 1) basic human needs, including medical care and protection from harm during their confinement; and
>
> 2) a state jail official's liability for episodic acts or omissions cannot attach unless the official had subjective knowledge of a substantial risk of serious harm to a pretrial detainee, but responded with deliberate indifference to that risk.

Hare v. City of Corinth, 135 F.3d 320 (5th Cir. 1998)

Again, Petitioner had the burden of showing that the State acted or failed to act with "deliberate indifference" to the "basic human needs" of Mr. Carter. See *Hare* at 326 (quoting *Estelle v. Gamble*, 429 U.S. 97, 104-105, 97 S.Ct. 285, 291-92 (1976)). The lower court found no evidence of such deliberate indifference.

As important as the court finding no deliberate indifference was the fact that the State Court applied the correct legal test – the same test which is used throughout the circuits of the United States.

III.

Mississippi sovereignty and the immunities under the Mississippi Tort Claims Act do not violate constitutional rights of petitioners.

The Petitioner argues a due process violation rooted in a liberty interest rather than property interest. The distinction between a "liberty" interest and a "property" interest is significant. It is in this distinction that we see that there is no difference between the courts within the United States.

The liberty interest described in the Petition is derived from the relationship between the parent and child. Yet, the interest in having a wrongful death claim considered separate from the claims of the decedent rest in property rights conveyed by the state. Such property rights have not been conveyed by Mississippi.

In support of their position the petitioners cite *Bell v. City of Milwaukee*, 746 F.2d 1205 (7th Cir. 1984). *Bell* involved an action by an estate after a police involved death, where the court looked to the meaning of Wisconsin's wrongful death and governmental immunity statutes. The resulting analysis was a determination that a property right was created by the State of Wisconsin.

Mississippi Courts considered the Mississippi wrongful death statutes and the Tort Claims Act and determined that no property right was established. Hence, no conflict in the laws exist, and the writ of certiorari should not be granted.

IV.

Punitive damages in the absence of liability, without a constitutional right to such damages, and when the petitioners' Second Amended Complaint did not seek such recovery, are not available.

The petitioner raises the question of punitive damages. It is important to first note that the Mississippi Supreme Court did not rule on the question of punitive damages. The absence of liability precluded consideration. For that reason alone, it would be prudent to deny certiorari on this question.

Further, immunity under the Mississippi Tort Claims Act, and the exclusion of punitive damages, does not violate the due process clause or equal protection clause. *Quinn v. Mississippi State University*, 720 So.2d 843 (Miss. 1998). Principles of sovereign immunity do not violate the due process clause of the Fourteenth Amendment since there is no right to sue the state at common law, and where the legislature continued to withhold such right, none is created. *Mohundro v. Alcorn County*, 675 So.2d 848 (Miss. 1996).

Further and contrary to the Petitioners' suggestion, they would not be entitled to punitive damages under 42 U.S.C. §1983 in any event. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 101 S.Ct. 2748 (1981).

Finally, the punitive damages argument is shallow when one considers that the Second Amended Complaint did not seek such recovery.

CONCLUSION

There is no conflict between the Mississippi Supreme Court and the Circuit Courts within the United States on any issues presented. This petition is no more than an effort to reinterpret facts. The petition does not call to question a conflict in the laws.

FOR THESE REASONS, Respondents pray that the Petition for Certiorari will denied.

Mississippi Department of
Corrections and Fred Childs,
Respondents

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